

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE TREMONT SECURITIES LAW,  
STATE LAW AND INSURANCE  
LITIGATION

Master File No.  
08 Civ. 11117 (TPG)

This Document Relates to:  
State Law Action, No. 08 Civ. 11183

**NOTICE OF *EX PARTE* MOTION AND *EX PARTE* MOTION FOR  
AN ORDER, PURSUANT TO FED. R. CIV. P. 24(d), (1) REQUIRING  
CORRECTIVE NOTICES TO BE SENT TO XL FUND AND PRIME FUND  
LIMITED PARTNERS REGARDING CERTAIN DEFENDANTS'  
UNAUTHORIZED AND MATERIALLY MISLEADING NOTICES  
REGARDING THE MADOFF TRUSTEE-TREMONT SETTLEMENT  
AND (2) GRANTING INJUNCTIVE AND OTHER RELATED RELIEF**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on August 8, 2011, at 3:00 PM, or as soon thereafter as counsel may be heard, in Department 26(B) of the Daniel Patrick Moynihan Courthouse, located at 500 Pearl Street, New York, New York 10007, Lakeview Investment, L.P. and Phoenix Lake Partners, L.P., as limited partners of Rye Select Broad Market XL Fund, L.P. ("XL Fund"), and Edward L. White, for himself and on behalf of White Trust dated May 3, 2002, and Rigdon O. Dees, III, as limited partners of Rye Select Broad Market Prime Fund, L.P. ("Prime Fund") (collectively, the "XL-Prime Limited Partners"), will move, and hereby do move, *ex parte* for entry of an order, pursuant to Fed. R. Civ. P. 24(d):

(1) requiring Defendants' Tremont Group Holdings, Inc. ("Tremont Holdings") and Bank of New York Mellon Corp. ("BNY") to send XL Fund and Prime Fund limited partners notices correcting certain materially misleading statements contained in the unauthorized notices that Tremont Holdings and BNY sent via email to XL Fund and Prime Fund limited partners on August 5, 2011, regarding the proposed settlement between the Madoff Trustee and defendants in *Picard, Trustee v. Tremont Holdings, et al.*, S.D.N.Y. Adv. Pro. No. 10-05310 (BRL) (the "Madoff Trustee-Tremont Settlement");

1 (2) enjoining all defendants in this case from communicating  
2 directly with XL Fund and Prime Fund limited partners about the  
3 Madoff Trustee-Tremont Settlement, or the proposed settlement in this  
4 action, without court approval until a judgment is entered in this action  
5 and the time for appeal has expired; and

6 (3) compelling defendants and interim class counsel to provide  
7 certain documents and information to XL-Prime Limited Partners so that  
8 they may prepare a suitable corrective disclosure for the Court's  
9 consideration and approval; and

10 (4) briefly continuing the hearing on the proposed settlement,  
11 plans of allocation and requests for attorneys' fees in this action so that  
12 XL Fund and Prime Fund investors will be properly informed about the  
13 Madoff Trustee-Tremont Settlement at the time of the hearing on the  
14 proposed settlement in this case.

15 This motion is based on this *ex parte* notice and *ex parte* motion,  
16 the supporting memorandum of points and authorities, the supporting declarations of  
17 Joel Yanowitz, Edward L. White and Rigdon O. Dees, III, the pleadings and papers  
18 filed in this action, argument of counsel, and such other materials and information as  
19 may be brought before the Court.

20 Dated: August 8, 2011

21 By: /s/ Benjamin Rozwood  
22 BENJAMIN ROZWOOD  
23 ROZWOOD & COMPANY  
24 503 North Linden Drive  
25 Beverly Hills, CA 90210  
26 Tel: (310) 246-1451  
27 Fax: (310) 246-9786

28 Attorneys for Lakeview Investment, L.P.;  
Phoenix Lake Partners, L.P.; Edward L.  
White, for himself and on behalf of  
White Trust dated May 3, 2002, and  
Rigdon O. Dees, III